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Conference of the States Parties to the United Nations Convention against Corruption

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Working Group on Asset Recovery
12th Session
Vienna, 6–7 June 2018

Draft report

I. Introduction

1. In its resolutions 1/4, 2/3, 3/3, 4/4, 5/3, 6/2, 6/3 and 7/1, the Conference of the States Parties to the United Nations Convention against Corruption established and continued the work of the open-ended intergovernmental Working Group on Asset Recovery.

2. The Conference also welcomed the outcome of the meetings of the Open-ended Intergovernmental Working Group on Asset Recovery and invited the Working Group to propose future agenda items, and decided that the Working Group should continue its work by, inter alia:

(a) Continuing its efforts to gather information on and conduct enhanced analysis of best practices for the identification and compensation of all different types of victims in accordance with the Convention, including, as necessary, by soliciting information from States parties, facilitating exchanges among experts and organizing expert panels, while taking into consideration similar work undertaken at prior meetings of the Working Group, by expert panels and in discussions;

(b) Conducting analysis on third-party challenges and their impact on asset recovery under chapter V;

(c) Continuing to collect data on best practices, with a view to developing non-binding guidelines concerning the timely sharing of information to enable States parties to take appropriate action, in accordance with article 56 of the Convention;

(d) Conducting an analysis of how communication and coordination between various asset recovery practitioner networks could be improved, with a view to developing guidelines for the proactive and timely sharing of information, as mentioned in subparagraph (c) above.

II. Organization of the meeting

A. Opening of the meeting

3. The Working Group on Asset Recovery held its twelfth session in Vienna on 6 and 7 June 2018, which included two meetings held jointly with the Implementation Review Group on 6 June.

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4. The twelfth session of the Working Group was chaired by Vivian N. R. Okeke (Nigeria) and Ignacio Baylina Ruiz (Spain).

B. Adoption of the agenda and organization of work

5. On 6 June 2018, the Working Group adopted the following agenda:

1. Organizational matters:

   (a) Opening of the meeting;

   (b) Adoption of the agenda and organization of work.

2. Overview of progress made in the implementation of asset recovery mandates.

3. Forum for advancing practical aspects of asset recovery, including challenges and good practices.

4. Thematic discussions:

   (a) Timely sharing of information to enable States parties to take appropriate action, in accordance with article 56 of the Convention: collection of data with a view to developing non-binding guidelines;

   (b) Improving communication and coordination between various asset recovery practitioner networks, with a view to developing guidelines for the proactive and timely sharing of information.

5. Forum for discussions on capacity-building and technical assistance.

6. Adoption of the report.

C. Attendance

6. The following States Parties to the Convention were represented at the meeting of the Working Group: Algeria, Angola, Argentina, Austria, Azerbaijan, Bangladesh, Belgium, Benin, Bhutan, Bolivia (Plurinational State of), Botswana, Brazil, Brunei Darussalam, Cambodia, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechia, Dominican Republic, Ecuador, Egypt, El Salvador, Eswatini, Finland, France, Gabon, Germany, Ghana, Greece, Guatemala, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Japan, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lebanon, Lesotho, Libya, Lichtenstein, Malawi, Malta, Malaysia, Mauritius, Mexico, Mongolia, Morocco, Namibia, Nepal, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Palau, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Switzerland, Tajikistan, Thailand, Togo, Tunisia, Turkey, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zimbabwe.

7. The European Union, a regional economic integration organization that is a party to the Convention, was represented at the meeting.

8. The following United Nations programmes and funds, institutes of the United Nations Crime Prevention and Criminal Justice Programme Network and specialized agencies of the United Nations system were represented by observers: Basel Institute of Governance, United Nations Interregional Crime and Justice Research Institute (UNICRI), International Labour Office (ILO), World Bank (WB).

9. The following intergovernmental organizations were represented by observers: Cooperation Council for the Arab States of the Gulf (GCC), European Police Office

(EUROPOL), International Anti-Corruption Academy (IACA), Organization for Security and Cooperation in Europe (OSCE).

10. The Sovereign Military Order of Malta, an entity maintaining a permanent observer office at Headquarters, was represented.

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Addendum

III. Forum for discussions on capacity-building and technical assistance

1. At its meetings held jointly with the Implementation Review Group on 6 June 2018, the Working Group on Asset Recovery considered item 5 of its agenda entitled "Forum for discussions on capacity-building and technical assistance", as well as item 4 entitled "Technical assistance" of the agenda of the Implementation Review Group. The joint meetings were held in line with the resolution 6/1 of the Conference, in which the Secretariat was requested to structure the provisional agendas of the Implementation Review Group and the other subsidiary bodies established by the Conference in such a way as to avoid duplication of discussions, while respecting their mandate and pursuant to the workplan agreed for 2017–2019.[1]

2. A representative of the secretariat presented the note entitled "Technical assistance in support of the implementation of the United Nations Convention against Corruption, including analysis of technical assistance needs emerging from the country reviews" (CAC/COSP/IRG/2018/CRP.2). In noting that the executive summaries of their country reviews of nine States had been finalized in the second cycle by the time of the meeting, the representative of the secretariat explained that six of those contained technical assistance needs. Of the needs identified, two thirds related to chapter II (Preventive measures) and one third to chapter V (Asset recovery) of the Convention. Overall, the most commonly identified need was capacity-building, specifically in regard to the enhancement of technical skills and the capacity to monitor and assess data. The need for legislative assistance had also been identified by a few States. The representative of the secretariat further explained that, while discussions during country visits frequently focused on rules on virtual and cryptocurrencies, only one State had identified the need for assistance relating to confiscation with regard to virtual currencies. The representative of the secretariat also noted that some States that had identified technical assistance needs in the first cycle had not done so in the second cycle. While this could be an indication that

[1] Information on the panel and the ensuing discussions on using reviews of the implementation of the Convention as a basis for programme development, which was held during the joint meetings of the two Working Groups, is contained in the report of the ninth session of the Implementation Review Group.

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follow-up to first cycle recommendations was showing tangible results, further information was required to confirm this encouraging observation.

3. In relation to technical assistance in support of the Convention, the representative outlined a number of actions taken, including the regional platform approach to fast-track the implementation of the Convention in Eastern Africa and South-East Asia, funded by the United Kingdom Prosperity Fund. UNODC had also continued its support for the strengthening of regional networks engaged in asset recovery and confiscation. The representative of the secretariat then presented the study entitled "Effective management and disposal of seized and confiscated assets" (CAC/COSP/WG.2/2018/CRP.1) together with the "Draft non-binding guidelines on the management of frozen, seized and confiscated assets" (CAC/COSP/WG.2/2018/3). It was noted that the secretariat, in continuing its work on the two documents, encouraged States to continue sharing comments and good practices with the secretariat. The non-binding character of the guidelines was underscored and the secretariat explained that the role of the guidelines was to serve as an inspiration and guidance for States wishing to enhance or review their asset management structures.

4. The introductory remarks by the representative of the secretariat were followed by an overview delivered by the coordinator of the joint World Bank-UNODC Stolen Asset Recovery Initiative (StAR), which focused on technical assistance and capacity-building delivered by the Initiative since the Working Group on Asset Recovery last met.

5. The StAR coordinator explained that country engagements were designed as multi-year programmes and covered a wide range of activities, including tactical analysis and establishment of asset recovery strategies, financial investigation techniques, asset disclosure, forensic audits in preparation for cases, case management advice, facilitation of contacts and case consultations with other jurisdictions, as well as assistance with mutual legal assistance requests. He noted work with financial intelligence units, law enforcement, public prosecutors, central authorities, judges and magistrates. Such assistance entailed both capacity-building activities and targeted, case-related support. The methodology for StAR assistance included training workshops, as well as the placement of mentors and the facilitation of cooperation, both domestically and internationally.

6. The StAR coordinator noted that, during the previous year, 20 countries had received such assistance through the StAR Initiative. In December 2017, StAR facilitated the organization of the Global Forum for Asset Recovery (GFAR), co-hosted by the United States of America and the United Kingdom, which included 250 participants, representing 26 jurisdictions. More than 100 bilateral meetings took place at which ongoing cases were discussed focusing on Nigeria, Sri Lanka, Tunisia and Ukraine.

7. StAR also continued its work on the development of knowledge products and supported the publication of beneficial ownership guides and the finalization of "the Guidelines for the Efficient Recovery of Stolen Assets" elaborated during the Lausanne process.

8. A representative of the Secretariat introduced the background of the panel on initiatives to promote progress in asset recovery cases.

9. In briefing the meeting on the Global Forum on Asset Recovery (GFAR) hosted by the United States and the United Kingdom in December 2017, a panellist from the United States explained that GFAR had been established following the London Anti-corruption Summit held in December 2016, in response to emerging needs from four focus countries: Nigeria, Sri Lanka, Tunisia and Ukraine. The objective of GFAR was to advance the recovery of assets such as through building of capacity, dialogue and progress on actual asset recovery cases. The Forum was attended by practitioners involved in ongoing cases in the focus countries and its programme included plenary sessions on various relevant topics. The programme also included technical sessions along three work streams: for prosecutors, technical assistance providers, and staff of

financial intelligence units. There was also a separate work stream for civil society organizations. He explained that GFAR was a process including the preparation of road maps for each of the focus countries, capacity-building of practitioners, national case discussions and technical assistance provided during the meeting, as well as follow-up after the meeting in order to build the long-term capacity of the focus countries. He explained that the discussions held during the event had facilitated practical progress on cases in the focus countries and highlighted concrete outcomes of GFAR, including the signing of a memorandum of understanding between the World Bank, Nigeria and Switzerland for the return of US$ 321 million to Nigeria.

10. The panellist from Sri Lanka described the efforts that had been made following a regime change in Sri Lanka in 2015. He explained that the new government made a global appeal for the return of stolen assets from abroad. In this context, he emphasized the particular difficulties that countries can experience in international cooperation and the importance of establishing a domestic coordination mechanism. The speaker further emphasized the importance of political will, which in the case of Sri Lanka, led among other things to the establishment of a financial crimes unit in the police, and the strengthening of the main anti-corruption agency. Other efforts included improving the legal framework, through a participatory process, involving civil society. The speaker explained that their efforts were aided by the GFAR process and by asset recovery training received, which culminated in over 38 meetings with international counterparts on pending cases. While international cooperation remained a challenge in terms of engaging with a few jurisdictions, he expressed optimism and called for asset recovery to remain a global priority and for the continued investment of resources in asset recovery.

11. The panellist from Norway recalled that asset recovery needed to be viewed in the overall context of the Sustainable Development Goals, in particular the discussion on financing for development. She emphasized the enormity of the task to mobilize resources to achieve the 2030 Agenda for Sustainable Development and that progress in particular cases was yet to transform into a systematic and consistent momentum. She reported on the challenges in investigating and prosecuting grand corruption cases in Norway, including very long timelines for concluding cases. The readiness of Norway to continue supporting regional practitioners' networks, the importance of technical assistance as an indication of political support and the need of guaranteeing the independence of practitioners were stressed by the speaker.

12. The panellist from the StAR initiative reiterated the continuous nature of the GFAR process. She explained that the preparations for the event were a collaborative effort of all four focus countries and multiple relevant jurisdictions. These included the provision of technical assistance such as training, legal advice and organization of bilateral and multilateral meetings and dialogue, and the involvement of civil society.

13. In the ensuing discussion, speakers expressed their appreciation for GFAR, recognizing its potential to build political momentum and consensus, including on principles of transparency. Speakers noted with appreciation the technical assistance provided and the work carried out by the secretariat. One speaker emphasized the need to strengthen international cooperation for the return of stolen assets in view of the 2030 Agenda, and proposed further work in this regard, including the compilation of information for refusal of requests. Speakers further expressed appreciation for the work of the secretariat on preparing non-binding guidelines on the timely sharing of information, as well as those on the management of returned assets. Another speaker highlighted challenges faced by States in securing international cooperation using administrative and civil proceedings to recover stolen assets and urged further discussion of this topic in the context of the Working Group on Asset Recovery and in the framework of technical assistance activities. Another speaker, while acknowledging these challenges, stressed the need to also focus on furthering cooperation in criminal proceedings.

14. Many speakers expressed their readiness to provide technical assistance and outlined their regional and thematic technical assistance programmes. They stressed the importance of partnerships, including through the support of networks and the building of synergies with other relevant international organizations in order to make best use of available resources, knowledge and expertise and to avoid duplication in the provision of technical assistance. One speaker emphasized the need for a country-led, country-based integrated and coordinated approach to technical assistance. Another speaker highlighted the benefits of publishing full country review reports in order to promote greater understanding of technical assistance needs of States parties under review. One speaker noted the importance of linking the thematic reports on trends from both review cycles to technical assistance programming, and of involving civil society in relevant activities.

15. A panel on partnerships on asset recovery was organized. A representative of the secretariat provided background information on the topic of the panel.

16. The panellists from Germany and from the International Centre for Asset Recovery (ICAR) of the Basel Institute of Governance briefed the Group on the "Africa-Europe Dialogue on Asset Recovery", which had been organized by the German Agency for International Cooperation (GIZ) and ICAR in Berlin on 21 and 22 March 2018. The panellists noted that the Dialogue had been organized in view of Germany's commitment to asset recovery as a means for domestic resource mobilization. The panellist noted that participants at the Dialogue had agreed that, while the Convention provided the framework for international cooperation on corruption cases and asset recovery, cooperation was a shared responsibility between requesting and requested States. They highlighted that participants still faced particular difficulties with regard to the enactment of asset recovery enabling measures such as the establishment of the offence of illicit enrichment and non-conviction-based confiscation of unexplained wealth. Some of the proposed measures which would facilitate asset recovery, included enhanced action against banks, lawyers and other enablers in the countries where assets were located.

17. The panellist from Switzerland provided an overview of the "Addis Process" and of his country's experience on asset return. He explained that the Addis process had been initiated by Ethiopia and Switzerland, with the support of UNODC, to bring together the various agendas of financing for development, asset recovery and sustainable development. The process comprised three workstreams, i.e. the management of seized and confiscated assets; the end use of returned assets in support of the SDGs; and the negotiation of agreements for returning assets. He underlined that, while each case was different and involved different countries, needs and amounts, there were nevertheless similarities and general recommendations that enhance cooperation, including the importance of partnerships.

18. The panellist from China introduced the "Ten Recommendations on Asset Recovery" that were recently adopted as the outcome of discussions at the APEC Network of Anti-Corruption Authorities and Law Enforcement Agencies (ACT-NET) Training Workshop on Asset Recovery, held in Bangkok in March 2018. The recommendations were grouped under three headings. Under the first heading, "Commitment", APEC members reiterated their political commitment to the Convention and to denying safe haven to corruption offences and proceeds of corruption. The second part, "Cooperation", asks APEC members to proactively use the United Nations Convention against Corruption as a legal basis for mutual legal assistance and asset recovery. Finally, under the third heading, the importance of "Capacity-Building" was also stressed. The panellist also reiterated his country's commitment to deny safe haven to corrupt officials and ill-gotten assets, based on the concept of "zero-tolerance to corruption, zero loopholes in mechanisms for asset recovery and zero obstacles to cooperation".

19. In the ensuing debate, speakers welcomed the organization of the "Africa-Europe Dialogue on Asset Recovery" and the "Addis Process". Several speakers referred to their countries' experiences in sharing information and intelligence for the

purpose of asset recovery, and their successes and challenges in seizing, freezing and confiscating proceeds of corruption. Speakers emphasized the importance of regional asset recovery inter-agency networks for the sharing of case-related information, as well as the role of financial intelligence units (FIUs) and the Egmont group of FIUs. Speakers also underlined the importance of technical assistance in the field of asset recovery.

20. One speaker suggested that similar forums such as the Global Forum on Asset Recovery, be held in other regions.

21. A representative of the International Anti-Corruption Academy (IACA) underscored the crucial importance of education and training of anti-corruption practitioners and presented an overview of IACA's programmes, including the Master's degree in anti-corruption studies (MACS).

22. A number of speakers welcomed the organization of joint meetings of the Working Group on Asset Recovery and Implementation Review Group.